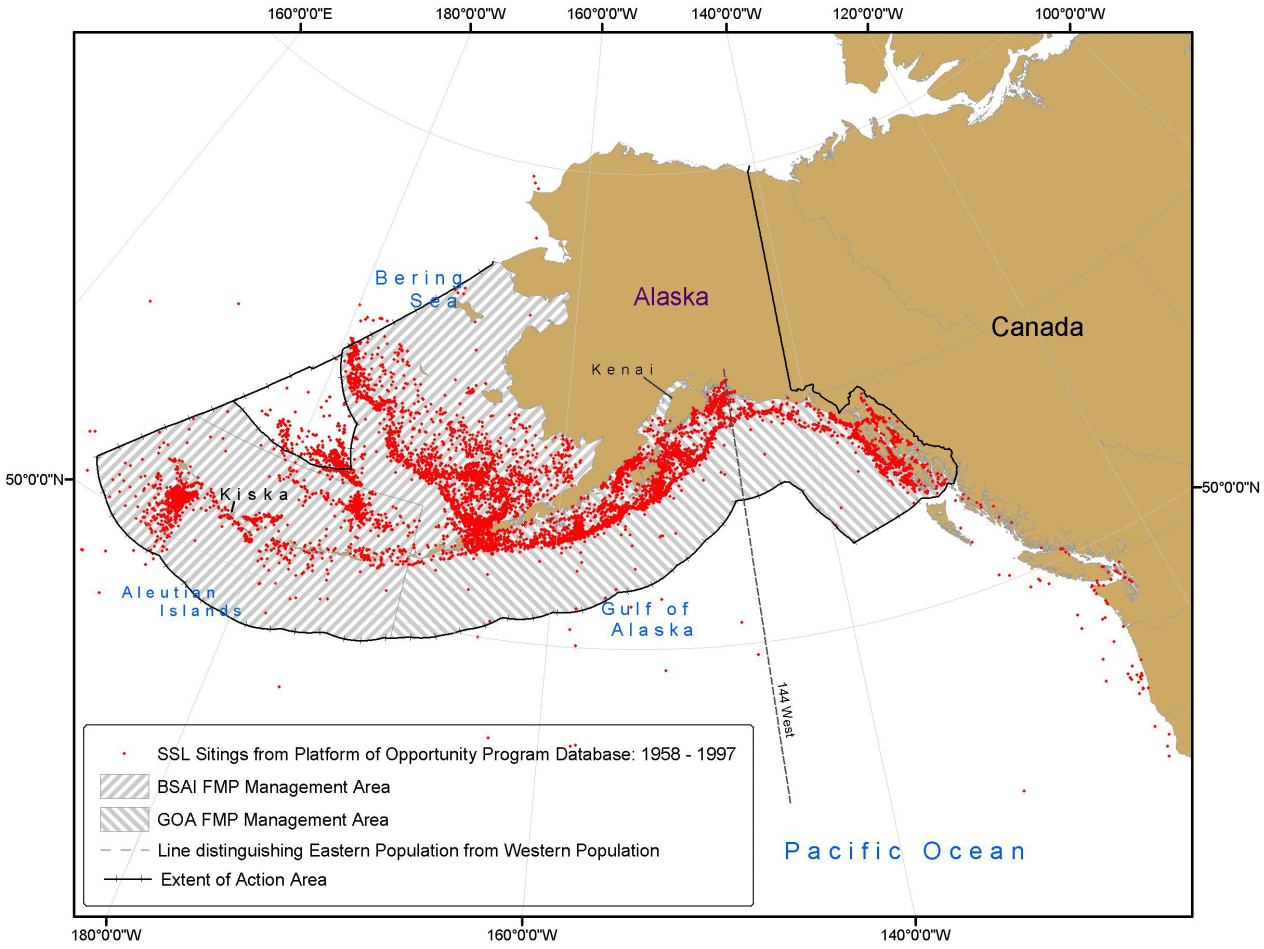
# Chapter 1 Purpose and Need for Action

## 1.1 Introduction

Management of the Federal groundfish fishery located off Alaska in the 3-200 nautical mile (nm) U.S. Exclusive Economic Zone (EEZ) is conducted under two Secretarial approved federal fishery management plans (FMPs), *The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area* (BSAI) (NPFMC, 2000a) and *The Fishery Management Plan for the Groundfish of the Gulf of Alaska* (GOA) (NPFMC, 2000b) (Figure 1.1-1). These FMPs and their amendments are developed under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable Federal laws and executive orders (E.O.s). To briefly summarize, the purpose of the FMPs is to manage the groundfish fisheries for optimum yield (OY) and to allocate harvest among user groups while preventing overfishing and conserving marine resources. The FMPs, and any amendments to the FMPs, are North Pacific Fishery Management Council (Council) documents. The National Marine Fisheries Service (NMFS) develops Federal Fishing Regulations (50 CFR part 679) implementing the FMPs, their amendments, and regulatory actions necessary to conserve public trust resources.

Figure 1.1-1 Map of the groundfish fisheries management areas in the North Pacific Ocean and range of Steller sea lions.



All federal actions, including amendments to FMPs and changes to Federal Fishing Regulations, must comply with applicable Federal laws and E.O.s. The Federal laws most applicable to fisheries management actions include: the Magnuson-Stevens Act, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA) and the Regulatory Flexibility Act (RFA). E.O.s important to this fishery management action include E.O. 12866 because of its relevance to regulatory planning and review; E.O. 12898 pertaining to environmental justice, E.O. 13084 requiring consultation and coordination with Indian tribal governments, E.O. 13186 relating to migratory birds, and EO 13132 on Federalism. The decision making process on this proposed action is informed by determining relative compliance of the various alternatives to federal laws and E.O.s.

The NMFS determined that an environmental impact statement (EIS) was the appropriate kind of NEPA analysis for the proposed federal action being considered. The determination was based both on the fact that significant impacts would result from implementation of the action and that the action was controversial. The analysis is designated as a supplemental EIS (SEIS) because EISs were prepared when the subject FMPs were first approved and implemented by the Secretary of Commerce, and for subsequent major amendments to these FMPs. Decisions informed by those prior FMPs are not being revisited through this analysis and the decisions being informed by this analysis are not tiering off previous decision documents. The scoping process used to identify analytical issues and alternatives to meet the identified purpose and need of this analysis is documented in Appendix B.

Consultation under section 7 of the ESA for alternative 4 proceeded in parallel with preparation of the NEPA analysis. A draft Biological Opinion was contained in the draft SEIS (Appendix A) and the final Biological Opinion is contained in the final SEIS (Appendix A). The draft Biological Opinion was released for public review with the Draft SEIS and all comments received on it are contained in the final analysis (Volume III).

## 1.2 Purpose and Need

The primary purpose of the proposed action is to modify the BSAI and GOA pollock, Pacific cod and Atka mackerel fisheries such that the reconfigured fisheries do not jeopardize the continued existence of Steller sea lions or adversely modify their critical habitat. If more than one alternative accomplishes the primary purpose of this action, a secondary objective is to modify the fisheries such that the reconfiguration minimizes the economic and social costs that will be imposed on the commercial fishing industry and associated coastal communities.

The need for this federal action stems from several sources. First, the Council and NMFS have a responsibility to insure that fishing activities authorized under the FMPs and implementing regulation do not jeopardize the continued existence of any listed species or adversely modify its critical habitat. Second, in order for the pollock, Pacific cod, and Atka mackerel fisheries to commence on January 1, 2002, NMFS must implement a suite of Steller sea lion protection measures, be it the RPA from the 2000 Biological Opinion or some other alternative, because the emergency rules governing BSAI pollock, Pacific cod, and Atka mackerel fishing expire on December 31, 2001. Without any action by NMFS, important Steller sea lion protection measures regulating the pollock, Pacific cod, and Atka mackerel fisheries will cease to exist. Finally, new information about Steller sea lion movements based on telemetry studies and new analysis of Steller sea lion scat samples have become available since the issuance of the 2000 Biological Opinion. An examination of that information as it relates to necessary protection measures is warranted.

This analysis evaluates alternatives to mitigate potential adverse effects as a result of competition for fish between Steller sea lions and the BSAI and GOA pollock, Pacific cod, and Atka mackerel fisheries under a no action alternative as well as four other alternatives that would substantially reconfigure these fisheries.

In 1990, the Steller sea lion was listed as threatened as defined by the ESA (62 FR 24345) throughout its range (55 FR 12645, 55 FR 13488, 55 FR 49204, 55 FR 50005). Justification was based on evidence of a major decline in their abundance throughout most of their range, but most acutely in the core region from the Kenai Peninsula to Kiska Island (Braham *et al.*, 1980; Merrick *et al.*, 1987). In this region, counts of adult and juvenile Steller sea lions had declined by about 80% since the population size was estimated in the late 1950s. On May 5, 1997, NMFS reclassified Steller sea lions into two distinct population segments under the ESA. The reclassification was based on biological information collected since the species was listed as threatened in 1990. The Steller sea lion population segment west of 144°W longitude (near Cape Suckling, Alaska) was reclassified and listed as endangered; the remainder of the U.S. Steller sea lion population remains listed as threatened.

On November 30, 2000, NMFS released a comprehensive Biological Opinion on the groundfish fisheries of the BSAI and GOA, pursuant to section 7 of the Endangered Species Act (NMFS, 2000a). The Biological Opinion concluded that fisheries for pollock, Pacific cod, and Atka mackerel jeopardize the continued existence of Steller sea lions and adversely modify their critical habitat due to competition for prey and modification of their prey field. To mitigate this situation, the Biological Opinion included a set of sea lion protective measures (termed the Reasonable and Prudent Alternative, RPA), which included closure areas, limitations on the amount of pollock, Pacific cod, or Atka mackerel that could be harvested, establishment of seasonal harvest limitations, and a long-term experimental monitoring program. A one-year phase-in of these measures was imposed by Senator Ted Steven's rider to the fiscal year 2000 appropriations bill (Pub.L. 106-554).

The 2000 Biological Opinion is based on the following perspectives: "At present, the leading hypothesis to explain the continued decline of the western population of Steller sea lions is primarily the nutritional stress of juveniles and to a lesser extent adult females (Merrick *et al.*, 1987; Pitcher *et al.,*1998; Rosen and Trites, 2000a; Alaska Sea Grant, 1993). Such nutritional stress indicates decreased foraging success, potentially as a consequence of environmentally-driven changes in prey availability, but also as a consequence of competition with the BSAI and GOA commercial groundfish fisheries." As alluded to above, "the groundfish fisheries reduce prey availability on several scales, resulting in range-wide, regional, and local depletion of prey. Fishing activity may also preclude some sea lions from certain important foraging areas simply by disturbance, or the presence of fishing vessels, gear, and activity. Since sea lions and the fisheries may well target the same aggregations of prey, such interference may reduce foraging success even when local prey are relatively abundant." (NMFS, 2000a).

The 2000 Biological Opinion concluded the following: "After analyzing the cumulative, direct and indirect effects of the Alaska groundfish fisheries on listed species, NMFS concludes that the fisheries do not jeopardize any listed species other than Steller sea lions. The 2000 Biological Opinion concludes that the fisheries do jeopardize Steller sea lions and adversely modify their critical habitat due to competition for prey and modification of their prey field. The three main prey species that Steller sea lions and these fisheries compete for are pollock, Pacific cod, and Atka mackerel. The biological opinion provides a reasonable and prudent alternative to modify the fisheries in a way that avoids jeopardy and adverse modification." (NMFS, 2000a).

The 2000 Biological Opinion included a RPA to avoid jeopardy and adverse modification of critical habitat in the above noted western region. The overall approach of the RPA involved the following strategy: 1) protect a substantial number of the rookeries and haulouts used by Steller sea lions and the marine environment immediately offshore of these areas from disturbance associated with commercial fishing for the three primary prey species (i.e., walleye pollock, Atka mackerel, and Pacific cod), 2) protect a substantial portion of critical habitat from the effects of commercial fishing on the three primary prey species, 3) ensure that adequate forage resources are available to sustain a population of Steller sea lions in excess of 34,600 animals, and 4) in areas where fishing is allowed, ensure that fishing does not create areas where Steller sea lions are not able to successfully forage (NMFS, 2000a).

Prior to implementation of the RPA from the NMFS 2000 Biological Opinion, the President signed Public Law 106-554. In essence, Pub. L. 106-554 at § 209(c)(2) legislated that while the 2001 BSAI and GOA groundfish fisheries would be managed in a manner consistent with the RPA contained in the 2000 Biological Opinion and as modified by other provisions of § 209, the provisions of the RPA would be phased in during the 2001 fishing year. It further legislated that the RPA contained in the 2000 Biological Opinion would become effective in its entirety on January 1, 2002, unless revised as necessary and appropriate based on independent scientific review or other new information. In accordance with Pub. L. 106-554, and starting on January 1, 2001, the 2001 BSAI and GOA groundfish fisheries were initially managed in accordance with the fishery management plans and federal regulations in effect for such fisheries prior to July 15, 2000. This initial management regime was subsequently replaced via an emergency rule issued by NMFS January 22, 2001, under the Magnuson-Stevens Act and effective on January 18, 2001 (66 FR 7276). The emergency rule contained a suite of management measures that phased-in certain provisions of the RPA. That emergency rule was extended and modified on July 17, 2001 (66 FR 37167).

## 1.3 Related NEPA Documents

The original EISs for the BSAI and GOA FMPs were completed in 1981 and 1979, respectively. An SEIS on the action of total allowable catch (TAC) setting was finalized in December, 1998 (NMFS,1998a); that document analyzed the impacts of groundfish fishing over a range of TAC levels (five alternatives) and affirmed the status quo alternative for TAC-setting.

In addition, a raft programmatic SEIS has been circulated for public review and comment (NMFS, 2001a). The analysis evaluates the BSAI and GOA groundfish FMPs in their entirety against policy level alternatives. When completed, the programmatic SEIS will provide insight as to what environmental effects would result from other management regimes within an analytical framework. Findings of that analysis could result in FMP amendments that could lead to formal rulemaking and implementation of changes to the current management policy governing the groundfish fisheries off Alaska. The public comment period on the draft programmatic SEIS was from January 25, 2001, through July 25, 2001. Finalization of that document is not expected until well after this Steller Sea Lion Protection Measures SEIS reaches completion.

In addition to these EIS analyses, several draft and final EAs have been prepared to describe the impacts of implementing similar suites of fishery management measures to mitigate Steller sea lion conservation concerns associated with the federal groundfish fisheries. These EAs include:

- EA for the first emergency interim rule in 1999 to implement Reasonable and Prudent Alternative from the first 1998 NMFS Biological Opinion (NMFS, 1999a);

- EA for an extension of the 1999 emergency interim rule to further implement Reasonable and Prudent Alternatives from the first 1998 NMFS Biological Opinion (NMFS, 1999b);

- EA for an emergency interim rule in 2000 to implement Revised Final Reasonable and Prudent Alternatives from the first 1998 NMFS Biological Opinion (NMFS, 2000b);

- EA/RIR for an extension and revisions of the Emergency Interim Rule for 2001 harvest specifications for the Alaska groundfish fisheries and for Steller sea lion protective fisheries management measures (NMFS, 2001b).

Each of the EAs expanded the analysis, incorporating new information and new alternatives as they became relevant. These documents initially served to inform the Council on the possible environmental and economic consequences of various alternatives allowable under the guidelines of a 1998 biological opinion (NMFS, 1998b).

## 1.4 Public Participation

This analysis was developed and alternatives presented with full anticipation of, and opportunity for, public participation in the development of the final management measures to mitigate competition between the pollock, Pacific cod, and Atka mackerel fisheries and the western population of Steller sea lions. The concept of developing an alternative suite of fishery management measures to substitute for the RPA in the 2000 Biological Opinion was first raised at the December, 2000, Council meeting in Anchorage, Alaska. The public and the Council's Advisory Panel provided recommendations for additional analyses that would help in further discussions. At the December 2000 Council meeting the Council notified the public that additional participation would be solicited through establishment of a Council RPA Committee. The Committee's objective was to develop a recommendation for the Council on a suite of alternative management measures that would meet the mandates of the ESA, Magnuson-Stevens Act, and other applicable laws. Nominations were submitted and the Council Chairman appointed 21 members on February 10, 2001. The RPA Committee included members of the fishing community, the conservation community, NMFS, the Council's Scientific and Statistical Committee, and State agencies. Notifications of the Council's RPA Committee meetings were published in the *Federal Register*, in the Council newsletter, and on the Council's web page. All of these meetings provided additional opportunity for public comment and recommendations as members of the public were offered an opportunity to present comments to the Committee at several times during each Committee meeting. Preparers of this analysis were staff to the Council's RPA Committee. All discussions at RPA Committee meetings were used to define the scope of analytical issues examined in this analysis.

## 1.5 Coordination with Others

The Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA emphasize agency cooperation early in the NEPA process. Section 1501.6 states: "Upon request of the lead agency, any other Federal agency which has jurisdiction by law to be a cooperating agency. In addition, any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement, may be a cooperating agency." (40 CFR 1501.6)

NMFS requested that United States Coast Guard (USCG), United States Department of the Interior Fish and Wildlife Service (USFWS) and State of Alaska Department of Fish and Game (ADF&G) be cooperating agencies in preparing this SEIS. Each agency agreed to participate in the development of this SEIS and

provided data, staff, and review for this analysis. In addition, the Council staff provided technical support. Along with staff preparers of the lead agency, individuals from cooperating agencies, Council staff, and consulting agencies' staff, that made contributions to this analysis are listed in section 5.0 List of Preparers.

### 1.5.1 Federal

Both the U.S. Department of the Interior's Fish and Wildlife Service (USFWS) and the U. S. Coast Guard (USCG) have non-voting seats on the Council. USFWS has trust authority for seabird and other avian species in the management areas. Expert USFWS staff serve on the Council Groundfish Plan Teams and provided assistance with this analysis. The USCG has expertise with enforcement, search and rescue, vessel accidents and incidents at sea, and human safety at sea. Expert USCG staff provided assistance with this analysis.

The Environmental Protection Agency (EPA) is a reviewing agency for all EISs.

### 1.5.2 State

Representatives from the states of Alaska, Washington, and Oregon have voting seats on the Council. Expert Alaska Department of Fish and Game staff provided assistance with this analysis.

## 1.6 Project Area

The subject groundfish fisheries occur in the North Pacific Ocean and Bering Sea in the EEZ from 50°N latitude to 65°N longitude. The subject waters are divided into two management areas; the BSAI area and the GOA area. The BSAI area is further divided into two sub-areas (eastern Bering Sea and Aleutian Islands) and nineteen reporting areas. The GOA area is further divided into three sub-areas (western, central, and eastern) and eight reporting areas. Figures showing the areas and sub-areas are in section 2.5.

The action area for the federally managed BSAI groundfish fisheries effectively covers all of the Bering Sea under U.S. jurisdiction, extending southward to include the waters south of the Aleutian Islands west of 170°W longitude, to the border of the U.S. EEZ. The federally managed GOA groundfish fisheries includes the U.S. EEZ of the North Pacific Ocean, exclusive of the Bering Sea, between the eastern Aleutian Islands at 170°W longitude and Dixon Entrance at 132°40'W longitude. These regions encompass those areas directly affected by fishing, and those that are likely affected indirectly by the removal of fish at nearby sites. The area affected by the fisheries necessarily include adjacent state waters and international waters. Some parallel fisheries take place in State of Alaska waters (inside 3nm) concurrent with a federal fishery opening. Fish that are harvested in State waters during a parallel fishery opening are credited against the federal total allowable catch (TAC). A review of areas fished by the groundfish fisheries (Fritz *et al.*, 1998) suggests that virtually the entire Bering Sea and GOA (from the continental slope shoreward) is utilized by one fishery or another.